

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF)	DOCKET NO. 12-009
)	
Lynn Water and Sewer Commission)	FINDINGS OF VIOLATION
Lynn, Massachusetts)	
NPDES Permit No. MA0100552)	AND
)	
Proceedings under Sections 308(a))	ORDER FOR COMPLIANCE
and 309(a)(3) of the Clean Water Act,)	ON CONSENT
<u>as amended, 33 U.S.C. § 1319(a)(3)</u>)	

I. STATUTORY AUTHORITY

The following FINDINGS are made and ORDER ON CONSENT issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §§ 1318 and 1319(a)(3). Section 308(a) of the Act authorizes EPA to require the submission of any information required to carry out the objectives of the Act. Section 309(a)(3) of the Act grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342. These authorities have been delegated to EPA Region I's Regional Administrator and, in turn, to the Director of EPA, Region I's Office of Environmental Stewardship (the "Director").

The Order herein is based on findings of violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. MA0100552 and the NPDES General Permit for Small Municipal Separate Storm Sewer Systems. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order provides a schedule for compliance which the Director has

determined to be reasonable.

II. FINDINGS

The Director makes the following findings of fact:

1. The Lynn Water and Sewer Commission (“Commission”) is a public body established under the laws of the Commonwealth of Massachusetts having jurisdiction over disposal of sewage, and is therefore a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. The Commission is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5). The Commission is the owner and operator of a Publicly-Owned Treatment Works (“POTW”) which includes a wastewater collection system (“Collection System”), a wastewater treatment facility (“WWTF”) and four combined sewer overflow (“CSO”) outfalls from which it discharges pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), from point sources, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to Strawberry Brook, the Saugus River, Lynn Harbor (Broad Sound), and Nahant Bay. Strawberry Brook flows into the Saugus River, which flows into Broad Sound. These water bodies are all “waters of the United States” as set forth at 40 C.F.R. § 122.2 and, thereby navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. The Commission also operates a Small Municipal Separate Storm Sewer System (“Small MS4”), which is a system of conveyances (including roads with drainage systems, municipal streets, catch basins, gutters, ditches, man-made channels, and storm drains) designed to collect, convey, and discharge stormwater to receiving waters. The Small MS4 is designed to keep the stormwater separate from the Collection System.
4. The Commission’s Small MS4 discharges through point sources, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to Nahant Bay, Lynn Harbor (Broad Sound), the Saugus River, the Little River, Strawberry Brook, and Stacey Brook. The Little River and Strawberry Brook flow into the Saugus River, which flows into Broad Sound. Stacey Brook flows into Nahant Bay. These water bodies are all “waters of the United States” as

set forth at 40 C.F.R. § 122.2 and navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

Unpermitted Discharges from the Collection System

5. On March 30, 2007, the Commission was reissued NPDES Permit No. MA0100552 (the "NPDES Permit") by the Director of the Office of Ecosystem Protection of EPA, Region I, under the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region I, who in turn delegated this authority to the Director of the Office of Ecosystem Protection of EPA, Region 1.
6. The NPDES Permit authorizes the Permittee to discharge pollutants from specified point sources at the WWTF (outfall serial numbers 001 and 002) and the CSO outfalls (outfall serial numbers 003, 004, 005 and 006) to specified waters of the United States subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
8. Part 1.B. of the NPDES Permit prohibits point source discharges of pollutants from any location other than outfall serial numbers 001 through 006.
9. In the past, the Commission has reported untreated sanitary sewer overflows containing pollutants from its Collection System to navigable waters from locations other than outfall serial numbers 001 through 006.
10. The Commission's unauthorized discharges from its Collection System to navigable waters occur in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Storm Drain Discharges of Pollutants

11. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), on December 8, 1999 (64 Fed. Reg. 68722), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth NPDES permit requirements to address stormwater discharges from Small MS4s.

12. On April 18, 2003, EPA issued an NPDES General Permit for Stormwater Discharges from Small MS4s (the “Small MS4 General Permit” or “General Permit”) pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26¹ Pursuant to the Small MS4 General Permit, the Commission notified EPA it was seeking coverage under such permit on July 29, 2003. On October 2, 2003, EPA notified the Commission that its application was complete and it was authorized to discharge stormwater subject to the limitations and requirements of the Small MS4 General Permit.
13. Part I(B)(2)(j) of the Small MS4 General Permit specifically provides that the General Permit does not authorize the discharge of stormwater that is mixed with non-stormwater unless the discharge is in compliance with another NPDES permit or allowable under Part I(F) of the General Permit.²
14. Part I(B)(2)(k) of the Small MS4 General Permit does not authorize the discharge of stormwater that would cause or contribute to instream exceedances of water quality standards.
15. Fecal coliform bacteria, enterococcus bacteria, and sewage are “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
16. Nahant Bay is a surface water body designated as Class SA. Broad Sound and the Saugus River are designated as Class SB. They are all designated as habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth, and other critical functions, for shellfishing, and for primary and secondary contact recreation, pursuant to the Massachusetts Surface Water Quality Standards, 314 C.M.R. § 4.00.
17. The Massachusetts surface water quality standard for fecal coliform bacteria in Class SA

¹ This Small MS4 General Permit covers Small MS4s within the Commonwealth of Massachusetts; the State of New Hampshire; Indian Country lands within Connecticut, Massachusetts and Rhode Island; and Federal Facilities within Vermont. It applies to MS4s that are not defined as large or medium MS4s pursuant to 40 C.F.R. § 122.26(b)(4) and (b)(7), nor designated under 40 C.F.R. § 122.26(a)(1)(v).

² Part I(F) of the Small MS4 General Permit authorizes 18 categories of non-stormwater discharges provided that it has been determined by the permittee that the discharges are not significant contributors of pollutants to the MS4. These categories include water line flushing, landscape irrigation, diverted stream flows, and rising ground waters. In addition, discharges or flows from fire fighting activities conducted during emergency situations are authorized as allowable non-stormwater discharges, unless identified by EPA as significant sources of pollutants.

waters designated for shellfishing provides that the geometric mean of the most probable number (“MPN”) of samples collected may not exceed 14 organisms per 100 milliliters (“organisms/100 ml”), nor shall more than 10% of the samples exceed 28 organisms/100 ml. The Massachusetts surface water quality standard for fecal coliform bacteria in Class SB waters designated for shellfishing provides that the median or geometric mean of the MPN of samples collected may not exceed 88 organisms/100 milliliters, nor shall more than 10% of the samples exceed 260 organisms/100 ml.

18. The Massachusetts surface water quality standard for enterococci bacteria in Class SA and SB waters designated for primary and secondary contact recreation provides that the geometric mean of colony forming units (“cfu”) of the most recent five samples collected may not exceed 35 cfu/100 milliliters, nor shall any single sample exceed 104 cfu/100 ml.
19. On November 11, 2011, EPA Region I staff collected and transported to the EPA New England Laboratory (“NERL”) in accordance with an EPA-approved Quality Assurance Project Plan (“QAPP”) water quality samples from the Commission’s outlet of Stacey Brook³ at Kings Beach. This discharge flows across the beach into Nahant Bay. The data from analysis of these samples (included as Attachment 1) demonstrate that the Commission’s Small MS4, in violation of the General Permit, is discharging *Escherichia coli* (“*E. coli*”)⁴ and enterococcus bacteria that cause or contributes to violations of the Massachusetts water quality standards in Nahant Bay. The discharges were also analyzed for, and found to contain, selected Pharmaceuticals and Personal Care Products (“PPCPs”). The presence of the PPCPs in these samples provides evidence that the sources of the bacterial water quality exceedances are of human origin.
20. On May 8, 2012, EPA Region I staff collected and transported to the NERL in accordance with an EPA-approved QAPP water quality samples taken from the Commission’s stormwater outfalls and storm sewers tributary to the Saugus River. The

³ The Stacey Brook outfall consists of two large 10-foot by 10-foot box culverts that discharge onto Kings Beach along Nahant Bay at the municipal boundary of the Lynn, MA and Swampscott, MA. The south culvert discharges flow from Lynn’s Small MS4. Both culverts were sampled during the inspection.

⁴ *E. coli* is one of the organisms that constitute fecal coliform bacteria. A concentration of *E. coli* in excess of the water quality standard for fecal coliform bacteria demonstrates a violation of that standard.

data from analysis of these samples (included as Attachment 1) demonstrate that the Commission's Small MS4, in violation of the General Permit, is discharging E. coli and enterococcus bacteria that cause or contributes to violations of the Massachusetts water quality standards in the Saugus River. The discharges were also analyzed for, and found to contain, selected PPCPs. The presence of the PPCPs in these samples provides evidence that the sources of the bacterial water quality exceedances are of human origin.

21. The Commission has engaged in efforts to identify and eliminate illicit wastewater discharges to its Small MS4. The Commission has conducted field testing of Stacey Brook and areas tributary to the Saugus River to identify and remove illicit wastewater discharges to its Small MS4 drains. It is currently collaborating with the Massachusetts Department of Environmental Protection ("MassDEP") in bacteriological and caffeine analysis in the Stacey Brook drain to identify the source of elevated bacteria counts in the outfall, and during August 2012 conducted surfactant and ammonia analyses of samples taken from drains tributary to the Saugus River.
22. Discharges of pollutants from the Commission's Small MS4 drains include waste streams that are not "stormwater" as defined in 40 C.F.R. § 122.26(b)(13) and are not any of the 18 categories of allowable non-stormwater discharges under Part I(F) of the Small MS4 General Permit. Such discharges are specifically listed in Parts I(B)(j) and I(B)(2)(k) of the Small MS4 General Permit as not authorized by the General Permit and are not authorized by any other NPDES permit or any other provision of the Act.
23. The discharges from the Commission's Small MS4 drains that have caused or contributed to in-stream exceedances of water quality standards have occurred in violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER ON CONSENT

Accordingly, it is hereby ordered that:

LONG-TERM PREVENTATIVE MAINTENANCE PROGRAM

1. Within 180 calendar days of receipt of this Order, submit for approval a long-term preventative maintenance plan (the “Preventative Maintenance Plan”). The Preventative Maintenance Plan shall be designed as a reference guide for the Commission’s employees and its contractors and shall include, but need not be limited to, the following:
 - a. physical inspection and testing procedures, and protocols that will be used by the Commission’s staff to routinely inspect and maintain the Commission’s Collection System including all pump stations, force mains, emergency generators, alarms, telemetry equipment, siphons, interceptor, and lateral sewers. The Preventative Maintenance Plan shall also establish procedures and protocols to identify and correct any structural, mechanical, or operational problems that may result in unauthorized discharges from its Collection System;
 - b. priority and routine cleaning and maintenance schedules and procedures, including, but not limited to specific maintenance plans for those areas of the Collection System prone to fats, oils, and grease, silt and debris deposits and root penetration, as well as those areas that have been the source of unauthorized discharges in the past;
 - c. a tracking system for all maintenance activities, including, at a minimum, the use of Collection System maintenance software designed to catalog the maintenance history of the Collection System and to plan and schedule future Collection System maintenance activities;
 - d. procedures and protocols for corrective maintenance;
 - e. a description of the staffing, organizational structure, and resource commitments necessary to maintain the Collection System and to implement the Preventative Maintenance Plan;

- f. a plan for routine maintenance cleaning of the Collection System to maintain the its capacity and to prevent Collection System blockages; and
 - g. an implementation schedule.
- 2. The Preventative Maintenance Plan Implementation Schedule shall be incorporated and enforceable hereunder upon the Preventative Maintenance Plan Implementation Schedule's approval by, and as amended by, EPA.

**CAPACITY, MANAGEMENT, OPERATION AND MAINTENANCE (“CMOM”)
PROGRAM ASSESSMENT**

- 3. Within 180 calendar days of the effective date of this Order, the Commission shall complete and submit:
 - a. an inventory of the Commission’s Collection System that characterizes the age, condition, type of construction, and operation of each element of its Collection System and provides for further assessments where warranted;
 - b. an assessment of the capacity of critical elements of the Collection System; and
 - c. an assessment of the Commission’s operation and maintenance practices all of which shall comprise the "CMOM Program Self-Assessment".
 - d. As part of the assessments, the Commission shall determine whether improvements to the Commission’s preventative maintenance practices are necessary in order to preserve the infrastructure of the Collection System and to prevent future overflows from the Collection System. The CMOM Program Self-Assessment shall be conducted in accordance with EPA’s Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (EPA 305-B-05-002, January 2005)) (available on-line at http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf). As part of the CMOM Program Self Assessment, the Commission shall complete and submit the Wastewater Collection System CMOM Program Self-Assessment Checklist (the “CMOM Program Self-Assessment Checklist”) (see Attachment 2),

which is a Region 1 modification of the checklist that accompanies the above CMOM guidance.

CMOM Corrective Action Plan

4. Within 270 calendar days of the effective date of this Order, the Commission shall submit a plan (the “CMOM Corrective Action Plan”) that shall include the following:
 - a. a list of any deficiencies identified by the CMOM Program Self-Assessment;
 - b. a list of causes and contributing factors that lead to the overflows identified in response to this Order and the CMOM Program Self-Assessment Checklist;
 - c. a description of the specific short and long-term actions that the Commission is taking, or plans to take, to address any of the deficiencies identified during the completion of the CMOM Program Self-Assessment Checklist; and
 - d. a schedule for implementation of the CMOM Corrective Action Plan (the “CMOM Corrective Action Plan Implementation Schedule”).
5. The CMOM Corrective Action Plan Implementation Schedule shall be incorporated and enforceable hereunder upon approval by, and as amended by, the EPA and MassDEP.

CMOM Program Document

6. Within one year of the effective date of this Order, the Commission shall consolidate all of the Collection System preventative and reactive maintenance programs and Collection System capital improvement plans into a single CMOM Program document. The CMOM Program document shall be maintained at a location that is readily accessible to the Commission’s maintenance staff, and is available for inspection by the EPA and MassDEP.
7. Until further notice, beginning January 31, 2014, and each January 31st annually thereafter, the Commission shall submit a report (the “CMOM Program Implementation Annual Report”), detailing the actions taken by the Commission during the prior calendar year, or known by the Commission to have been taken by other parties, to resolve the deficiencies identified in the CMOM Corrective Action Plan and to comply with

Paragraphs III.3. through III.6. of this Order. The CMOM Program Implementation Annual Report shall also include:

- a. a summary listing of all unauthorized discharges, overflows, spills, and releases that have occurred during the previous calendar year, including building/private property backups, that result from capacity limitations, blockages, or mechanical, electrical or structural failures in that portion of the Collection System owned by the Commission. The tabular listing shall be organized chronologically and shall include:
 - i. the dates and times on which each event began and was stopped, or if it is continuing, a schedule for its termination;
 - ii. the location (nearest address) of each such event;
 - iii. the source of the notification (property owner, field crew, police);
 - iv. the cause of the event, including but not limited to, whether it was caused by debris, fats, oils, and grease, or root blockages, collapsed pipes, mechanical, electrical and structural failures, hydraulic overloads, vandalism and/or illicit connections;
 - v. the estimated gallons of wastewater released, and the method used to estimate the volume;
 - vi. a clear statement of whether the release did or did not reach a storm water catch basin or any other portion of the Commission's Small MS4. If the release occurred to the ground or street, regardless of whether the discharge reached any portion of the Commission's Small MS4, the Commission shall provide the location of the nearest down-gradient stormwater catch basin and the name of the receiving water to which the catch basin discharges;
 - vii. a clear statement of whether the release did or did not reach any surface water. If the release reached a surface water, the Commission shall include the name of the surface water;

- viii. the estimated gallons of wastewater discharged to the Small MS4 or surface water and the method used to estimate the volume;
 - ix. the measures taken to stop the overflow and prevent future overflows at the same location;
 - x. the date that overflow was reported to the EPA and MassDEP;
 - xi. the date of the last overflow that occurred at the same location; and
 - xii. The location of each event included in the summary listing shall also be noted on a map of the Commission's Collection System (See Paragraph III.16.b.).
- b. a description of the measures and programs implemented by the Commission to resolve any of the deficiencies identified pursuant to Paragraphs III.3. and III.4. of this Order and to reduce the frequency, duration and volume of unauthorized discharges, overflows, spills, and releases from the Commission's Collection System during the previous calendar year including copies of any contracts signed by the Commission to address any issues identified in the CMOM Corrective Action Plan. The report shall also include a description of the activities that the Commission has implemented to measure the effect and success of its efforts;
- c. a description of the type of the Commission's Collection System mapping (i.e. GIS, paper) and the last date the map(s) was updated;
- d. copies of the annual Collection System operation and maintenance budgets for the current and previous fiscal year noting the source of the funding – enterprise fund, general tax rate. Specifically indicate whether a capital replacement fund ("sinking fund") has been established to provide for replacement of aging wastewater Collection System infrastructure. Provide the Collection System maintenance staffing levels for the current fiscal year including:
 - i. budgeted positions;
 - ii. vacant positions; and

- iii. a brief description of the responsibilities of each position clearly distinguishing Collection System maintenance responsibilities from responsibilities for the WWTF and other public works operations;
- e. a description of any existing or proposed Commission programs designed to reduce the levels of extraneous flows that enter the Commission's Collection System and the specific measures that were taken by the Commission under these programs during the past calendar year including whether properties are inspected during the property transfer process to determine whether infiltration/inflow sources are tied into the Collection System and whether sanitary services have been tied into the Small MS4;
- f. a description of any existing or proposed Commission easement maintenance programs for locating and uncovering lost or buried Collection System manholes and the specific measures that were taken by the Commission under these programs during the past calendar year; and
- g. a projection of the measures that will be taken during the current calendar year to resolve any deficiencies identified in the CMOM Corrective Action Plan and to comply with this Order.

Third-Year CMOM Program Self-Assessment Checklist

- 8. An updated CMOM Program Self-Assessment Checklist shall be submitted in conjunction with the annual report required to be submitted by January 31, 2017 pursuant to Paragraph III.7. of this Order.

ILLICIT CONNECTION DETECTION AND ELIMINATION

- 9. By January 31, 2013, the Commission shall develop and submit to EPA for review and approval a comprehensive Illicit Discharge Detection and Elimination Plan ("IDDE Plan") for identifying and eliminating non-stormwater discharges to the Commission's Small MS4. The Commission shall develop the IDDE Plan by applying the EPA Region I's IDDE Protocol for the identification and elimination of illicit connections included as Attachment 3. The IDDE Plan shall address the Commission's entire Small MS4.

10. The Commission shall implement the IDDE Plan upon approval, conditional approval, or modification by EPA pursuant to Paragraph IV.9 of this Order. For those Small MS4 sub-catchment areas and associated Small MS4 outfalls subject to IDDE investigations, the IDDE Plan shall also include provisions for monitoring during both dry and wet weather to demonstrate the effectiveness of its illicit connection removal efforts. The IDDE Plan shall also include installation of signs at each Small MS4 outfall to allow each outfall to be readily identified in the field.
11. As part of the IDDE Plan the Commission shall track, for each calendar year and cumulative to date, the number of illicit discharges identified, their location, and the approximate flow removed by their elimination. This information shall be submitted as part of the Compliance Reports required by Paragraph III.16. of this Order.
12. As Part of the IDDE Plan, the Commission shall propose a program to publicize through local cable television, local newspapers, and inserts included with water and sewer bills a request that members of the public report to the Commission all Sanitary Sewer Overflows, whether to surface waters, streets, parklands or buildings and other property. The request shall identify a single point of contact at the Commission to which the reports shall be made.
13. The Commission shall report all such events to EPA and MassDEP. Events shall be reported within 24 hours via electronic mail (harding.george@epa.gov) to EPA, and shall be tabulated and submitted as part of the compliance reports required by Paragraph III.16. of this Order.
14. As a separate section of the IDDE Plan, the Commission shall provide an assessment of whether it has the resources to implement the IDDE Plan. Where it cannot be demonstrated to EPA's satisfaction that the Commission's in-house resources are adequate to execute the specific tasks of the IDDE Plan, the Commission shall execute a contract with a qualified contractor(s) to complete the specific tasks necessary to determine and remove the sources of non-stormwater pollutants in the Small MS4.
15. The Commission may be entitled to reimbursement from third parties for some of the work necessary to remove illicit connections. Nothing in this Order shall be construed to

make the Commission responsible for costs that would ordinarily be borne by third parties.

Reporting Requirements

16. On or before July 31, 2013, and quarterly until completion of all remedial measures required by the IDDE Plan, the Commission shall submit for review by EPA and MassDEP a Compliance Report that details actions taken during the previous calendar quarter by the Commission, or known by the Commission to have been taken by other parties, to comply with the terms and conditions of Paragraphs III.9-14 of this Order. Each Compliance Report shall include, at a minimum, the following items:
 - a. a listing of all illicit connections identified during the previous calendar quarter, including the estimated flow from each connection, the actions taken by the Commission to remove each connection, the date each connection was removed, and the cost of removing each connection. The report shall estimate the wastewater volume removed from the Small MS4 under the IDDE Plan during the reporting period for each individual illicit connection, cumulative for all illicit connections during the reporting period, and cumulative for all illicit connections to date. The report shall include an appendix with a summary listing of the address, associated volume, and date eliminated for all illicit connections identified to date.
 - b. a map or figure indicating the location of each illicit connection identified and each illicit connection removed, cumulative to date;
 - c. a description of any activities undertaken during the previous calendar quarter to achieve compliance with Paragraphs III.9.-14. of this Order;
 - d. a listing of all plans, reports, and other deliverables required by this Order that the Commission completed and submitted during the previous calendar quarter to comply with this Order;
 - e. the activities expected to be undertaken during the current calendar quarter in order to achieve compliance with this Order; and
 - f. all instances of noncompliance with this Order's requirements. If noncompliance

is reported, notification shall be provided in accordance with Paragraph V.2 and 3 of this Order.

IV. SUBMISSIONS REQUIRING EPA APPROVAL: THE COMMISSION'S OBLIGATION TO PROCEED

1. After review of any deliverable, plan, report, or other item ("submissions") which the Commission is required to submit for approval under this Order, EPA may: (a) approve, in whole or in part, the submission; (b) conditionally approve, in whole or in part the submission upon specified conditions; (c) disapprove the submission, in whole or in part, and notify the Commission of the deficiencies; or (d) disapprove the submission, in whole or in part, and modify the deliverable, plan, report, or other item itself, or portions thereof, to cure any deficiencies. In the event EPA that approves, conditionally approves, or modifies the submission, or portion thereof, the Commission shall perform all actions required by the submission or portion thereof, as approved, conditionally approved, or modified by EPA.
2. Upon receipt of a notice of disapproval with deficiencies (Paragraph IV.1.(c) above), the Commission shall correct the deficiencies and resubmit the affected document within **seven (7) days of receipt** or such other time period specified in the notice of disapproval. Notwithstanding a notice of disapproval, the Commission shall proceed to take any action required by any non-deficient portion of the submission. If EPA finds the submission as resubmitted is still deficient, the Commission shall be in violation of the Order.

V. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the Commission shall submit a written notice of compliance or noncompliance with each deadline. Notification shall be mailed within fourteen (14) days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.

2. If noncompliance is reported, notification shall include the following information
 - a. a description of the noncompliance;
 - b. a description of any actions taken or proposed by the Commission to comply with the lapsed schedule requirements;
 - c. a description of any factors that explain or mitigate the noncompliance; and
 - d. an approximate date by which the Commission will perform the required action.
3. After a notification of noncompliance has been filed, compliance with the past requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved. Submissions required by this Order shall be in writing and shall be mailed to the following addresses:

Office of Environmental Stewardship
 U.S. Environmental Protection Agency
 5 Post Office Square – Suite 100
 Boston, MA 02109-3912
 Attn: George Harding (OES 04-04)

Massachusetts Department of Environmental Protection
 Northeast Regional Office
 205 B Lowell Street
 Wilmington, MA 01887
 Attn: Kevin Brander

V. GENERAL PROVISIONS

1. The Commission may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the Commission. The Commission should carefully read the above-cited regulations before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the Act provides

that "effluent data" shall in all cases be made available to the public. See Section 308(b) of the Act, 33 U.S.C. § 1318(b).

2. This Order does not constitute a waiver or a modification of the terms and conditions of the NPDES Permit and General Permit. The NPDES Permit and General Permit remains in full force and effect. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.
3. This Order shall become effective upon receipt by the Commission.
4. The Commission waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Commission may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

Date

Daniel F. O'Neill, P.E.
Executive Director
Lynn Water and Sewer Commission

Date

Susan Studlien, Director
Office of Environmental Stewardship
Environmental Protection Agency, Region I